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ABOUT US

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ICSID INVESTMENT DISPUTE

CHALLENGES DETAILED

INFORMATION

AUTHORED BY - ANIMESH SHARMA

ICSID investment dispute challenges refer to the various issues and controversies that can arise during investment dispute settlement proceedings conducted under the auspices of the International Centre for Settlement of Investment Disputes (ICSID).

Some common challenges that parties may face in ICSID investment dispute settlement proceedings include the following:

Jurisdictional Challenges: One of the most common challenges in ICSID proceedings is determining whether the tribunal has jurisdiction over the dispute. This may arise when the parties dispute the interpretation of the provisions of the ICSID Convention or when they disagree over the scope of the arbitration clause in their investment agreement.

Applicable Law Challenges: Another challenge that may arise is determining the applicable law to be used in resolving the dispute. This can be particularly difficult when the investment agreement is silent on the issue or when there are conflicting provisions in the agreement.

Procedural Challenges: The conduct of the proceedings can also be a source of challenges. Parties may disagree over the appointment of arbitrators or the conduct of the proceedings. Issues related to the confidentiality of the proceedings and the use of expert evidence can also arise.

Valuation Challenges: In cases where compensation is sought, there may be challenges in valuing the investment or determining the damages suffered. This can be particularly challenging in cases involving intangible assets, such as intellectual property or goodwill.

Enforcement Challenges: Even after an award has been rendered, challenges may arise in enforcing the award. This can be particularly challenging when the losing party is a sovereign state or when assets are in different jurisdictions.

To address these challenges, ICSID has developed a comprehensive set of rules and procedures that govern the conduct of investment dispute settlement proceedings. These rules are designed to ensure fairness and impartiality, while also providing a streamlined and efficient process for resolving disputes. ICSID also maintains a panel of experienced arbitrators and conciliators who are selected based on their expertise and

experience in international investment law. Overall, ICSID provides a valuable forum for resolving investment disputes, but parties must be prepared to navigate the various challenges that can arise in the proceedings.

ABSTRACT

Investment dispute settlement proceedings conducted under the auspices of the International Centre for Settlement of Investment Disputes (ICSID) can be complex and challenging. Parties may face jurisdictional, procedural, valuation, and enforcement challenges, among others, as they seek to resolve their disputes. To address these challenges, ICSID has developed a comprehensive set of rules and procedures designed to ensure fairness and impartiality while also providing a streamlined and efficient process for resolving disputes. ICSID maintains a panel of experienced arbitrators and conciliators, and parties must be prepared to navigate the various challenges that can arise in the proceedings. Overall, ICSID provides a valuable forum for resolving investment disputes, but it requires careful consideration and strategic planning by the parties involved.

ICSID CHALLENGES

ICSID investment dispute settlement proceedings can be challenging for parties for assorted reasons, including:

Jurisdictional Challenges: Determining whether the tribunal has jurisdiction over the dispute can be complex, especially when the parties dispute the interpretation of the provisions of the ICSID Convention or the scope of the arbitration clause in their investment agreement.

Applicable Law Challenges: Determining the applicable law to be used in resolving the dispute can be difficult, especially when the investment agreement is silent on the issue or when there are conflicting provisions in the agreement.

Procedural Challenges: Conducting the proceedings can also be challenging, and parties may disagree over the appointment of arbitrators, the conduct of the proceedings, or the use of expert evidence.

Valuation Challenges: Valuing the investment or determining the damages suffered can be challenging, especially in cases involving intangible assets such as intellectual property or goodwill.

Enforcement Challenges: Enforcing an award can be challenging, especially when the losing party is a sovereign state or when assets are in different jurisdictions.

To overcome these challenges, parties should be prepared to engage in strategic planning, carefully consider the issues at hand, and work with experienced counsel who have knowledge of international investment law and the ICSID rules and procedures. Additionally, parties should consider alternative dispute resolution mechanisms, such as mediation, to resolve their disputes in a timely and cost-effective manner.

ICSID CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES

The ICSID Convention is a multilateral treaty that was signed in 1965 and entered into force in 1966. It was created to provide a specialized forum for the settlement of investment disputes between states and nationals of other states. The Convention established the International Centre for Settlement of Investment Disputes (ICSID) as an independent international organization to administer the Convention and to provide facilities for the resolution of investment disputes.

The Convention has been ratified by 154 countries, making it one of the most widely accepted international investment agreements. Under the Convention, any contracting state or national of a

contracting state can submit a dispute arising from an investment to ICSID for settlement. The Convention defines "investment" broadly to include any kind of asset, such as shares, bonds, intellectual property, and real property, that has been invested in the territory of another contracting state.

The Convention provides for three main methods of dispute resolution: arbitration, conciliation, and fact-finding. The arbitration method is the most used and is governed by the ICSID Arbitration Rules. These rules provide a detailed framework for the conduct of the arbitration proceedings, including the appointment of arbitrators, the conduct of the proceedings, and the enforcement of the award.

In addition to the main methods of dispute resolution, the Convention also provides for the ICSID Additional Facility, which allows disputes that do not meet the requirements for ICSID jurisdiction to be settled under the ICSID rules and procedures.

The Additional Facility is available for disputes involving investments that were made before a state became a party to the Convention or that do not meet the Convention's nationality or territorial requirements.

Overall, the ICSID Convention has played a significant role in promoting international investment and providing a stable and predictable framework for the settlement of investment disputes.

ICSID REPORT OF THE EXECUTIVE DIRECTORS ON THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES

The Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States is a document that was prepared by the Executive Directors of the International Centre for Settlement of Investment Disputes (ICSID) and submitted to the Administrative Council of ICSID. The report provides a detailed analysis of the implementation and interpretation of the ICSID Convention, as well as an overview of the activities of ICSID.

The report is published periodically and covers a wide range of topics related to investment disputes and the operation of ICSID. The latest report, published in 2020, includes information on the following topics:

- Developments in international investment law and policy
- The operation and management of ICSID
- The use of ICSID dispute settlement mechanisms
- ICSID's role in promoting investment and sustainable development
- Developments in the case law of ICSID tribunals
- The relationship between ICSID and other international organizations and institutions
- The financial and administrative operations of ICSID

The report also includes information on the activities of the ICSID Secretariat, including the caseload of investment disputes and the procedures used to manage cases. The report provides a valuable resource for those interested in the operation of ICSID and the settlement of investment disputes.

ICSID ADMINISTRATIVE AND FINANCIAL REGULATIONS

The Administrative and Financial Regulations of the International Centre for Settlement of Investment Disputes (ICSID) provide a framework for the administrative and fiscal management of ICSID. The regulations were first adopted in 1967 and have been amended several times since then to reflect changes in the operation and management of ICSID.

The regulations cover a wide range of topics related to the functioning of ICSID, including the following:

- The structure and functions of the Secretariat
- The appointment and remuneration of staff
- The management of the budget and financial resources of ICSID
- The establishment and management of trust funds
- The procurement of goods and services
- The management of property and assets
- The administration of the ICSID Additional Facility
- The application of the regulations to proceedings before ICSID tribunals

The regulations also establish procedures for the resolution of disputes related to their interpretation or application. The regulations are a vital component of the overall legal framework for the operation of ICSID and provide guidance on the administrative and fiscal management of the organization.

Overall, the Administrative and Financial Regulations of ICSID are intended to ensure the effective and efficient operation of the organization and to support its mission of facilitating the settlement of investment disputes between states and nationals of other states.

ICSID INSTITUTION RULES

The Institution Rules of the International Centre for Settlement of Investment Disputes (ICSID) govern the procedures for the initiation and conduct of arbitration and conciliation proceedings under the ICSID Convention and the ICSID Additional Facility. The rules were first adopted in 1978 and have been amended several times since then to reflect changes in the practice and procedure of ICSID. The rules cover a wide range of topics related to the institution of arbitration and conciliation proceedings, including the following:

- The initiation of proceedings
- The constitution of the tribunal
- The conduct of proceedings
- The decision of the tribunal
- The allocation of costs
- The recognition and enforcement of awards
- The confidentiality of proceedings
- The role of the ICSID Secretariat

The rules provide a comprehensive framework for the conduct of investment disputes under the auspices of ICSID. They are designed to ensure that proceedings are fair, efficient, and effective, while also providing flexibility to adapt to the specific circumstances of each case.

Overall, the Institution Rules of ICSID are an essential component of the legal framework for the settlement of investment disputes between states and nationals of other states. They help to ensure that the process of resolving such disputes is transparent, predictable, and consistent with the principles of international law.

The Conciliation Rules of the International Centre for Settlement of Investment Disputes (ICSID) provide a framework for the initiation and conduct of conciliation proceedings under the ICSID Convention and the ICSID Additional Facility. The rules were first adopted in 1978 and have been amended several times since then to reflect changes in the practice and procedure of ICSID.

The rules cover a wide range of topics related to the conduct of conciliation proceedings, including the following:

- The initiation of proceedings
- The appointment of conciliators
- The conduct of the conciliation
- The termination of the conciliation
- The confidentiality of the proceedings
- The role of the ICSID Secretariat

The rules provide a flexible framework for the conduct of conciliation proceedings, with a focus on the parties' ability to reach an amicable resolution of their dispute. Unlike arbitration, conciliation is a non-binding process, meaning that the parties are free to reject any proposed settlement and proceed to arbitration if they cannot reach an agreement.

Overall, the Conciliation Rules of ICSID are a vital component of the legal framework for the settlement of investment disputes between states and nationals of other states. They provide a flexible and effective means for the parties to seek a resolution of their dispute through negotiation and compromise, while also allowing for the possibility of binding arbitration if a settlement cannot be reached.

ICSID ARBITRATION RULES

The Arbitration Rules of the International Centre for Settlement of Investment Disputes (ICSID) provide a comprehensive framework for the initiation and conduct of arbitration proceedings under the ICSID Convention and the ICSID Additional Facility. The rules were first adopted in 1967 and have been amended several times since then to reflect changes in the practice and procedure of ICSID.

The rules cover a wide range of topics related to the conduct of arbitration proceedings, including the following:

- The initiation of proceedings
- The constitution of the tribunal
- The conduct of the arbitration
- The decision of the tribunal
- The allocation of costs
- The recognition and enforcement of awards
- The confidentiality of proceedings
- The role of the ICSID Secretariat

The rules provide a flexible framework for the conduct of arbitration proceedings, with a focus on ensuring that the proceedings are fair, efficient, and effective. They allow for the parties to have a significant degree of control over the process, including the selection of arbitrators, the timetable for the proceedings, and the scope of the evidence and arguments that can be presented.

Overall, the Arbitration Rules of ICSID are an essential component of the legal framework for the settlement of investment disputes between states and nationals of other states. They provide a transparent and predictable process for resolving disputes through binding arbitration, while also ensuring that the parties have a fair and equal opportunity to present their case.

ICSID LITERATURE REVIEW

A literature review on the International Centre for Settlement of Investment Disputes (ICSID) could cover a range of topics related to the institution and its activities. Here are a few potential areas of focus for an ICSID literature review:

History and evolution of ICSID: A review of the development of ICSID, from its creation as an institution in 1966 to its current role in the settlement of investment disputes.

The ICSID Convention and its impact: An examination of the provisions of the ICSID Convention and how it has influenced the settlement of investment disputes between states and foreign investors.

ICSID arbitration and conciliation rules: A review of the various rules and regulations governing ICSID arbitration and conciliation proceedings, including the Institution Rules, Arbitration Rules, Conciliation Rules, and Additional Facility Rules.

ICSID cases and jurisprudence: An analysis of the various cases heard by ICSID tribunals, including the legal issues raised in those cases and the impact of ICSID decisions on international investment law.

Critiques and challenges of ICSID: A review of the various criticisms that have been leveled against ICSID, including concerns about its perceived bias towards investors and the lack of transparency in its proceedings.

ICSID and the future of investment dispute resolution: An exploration of how ICSID fits into the broader landscape of investment dispute resolution, including the emergence of other institutions and mechanisms for settling investment disputes.

A comprehensive literature review on ICSID could draw on a wide range of academic articles, legal texts, and other relevant sources to provide a thorough analysis of the institution and its activities.

ICSID Methodology

The methodology for an analysis of the International Centre for Settlement of Investment Disputes (ICSID) would depend on the specific research questions and objectives of the study. However, here are some general steps that could be taken:

Research design: Determine the overall approach and scope of the study, including the types of data and sources to be analyzed.

Data collection: Collect relevant data and information on ICSID, such as case law, statistics, and other relevant documents. This may involve using various research methods, including legal research, interviews with stakeholders, and document analysis.

Data analysis: Analyze the data collected to identify trends, patterns, and insights into ICSID's operations, including its decision-making processes, the types of disputes it handles, and the outcomes of its cases.

Comparison with other investment dispute resolution mechanisms: Compare ICSID with other investment dispute resolution mechanisms, such as domestic courts, ad hoc arbitration, and other international tribunals, to identify similarities and differences.

Interpretation of results: Interpret the results of the analysis and draw conclusions about the effectiveness of ICSID in resolving investment disputes.

Limitations and assumptions: Identify and discuss the limitations of the study, including any assumptions made and any potential biases in the data collection and analysis.

Overall, the methodology for an analysis of ICSID would require a combination of legal research, data collection, and analysis techniques to provide a comprehensive assessment of ICSID's operations and effectiveness in resolving investment disputes.

ICSID Discussion

In discussing the International Centre for Settlement of Investment Disputes (ICSID), several key points come to mind:

First, ICSID is an important institution for the resolution of investment disputes between states and investors from other countries. Its establishment in 1966, as part of the World Bank Group, was a response to the growing need for a neutral forum for the resolution of disputes arising from international investment.

Second, the main advantage of ICSID is its ability to provide a neutral and impartial forum for the resolution of disputes. The ICSID Convention provides for a framework that is designed to ensure that the arbitration process is conducted fairly and efficiently, and that the resulting awards are enforceable.

Third, there are concerns about the legitimacy and transparency of ICSID, particularly regarding the perceived bias towards investors and developed countries. Critics argue that the current system lacks accountability and transparency, and that it is skewed in favor of multinational corporations at the expense of developing countries.

Fourth, there have been proposals for reforms to ICSID, such as changes to the rules and procedures, the composition of the tribunal, and the transparency and accountability of the process. While some reforms have been implemented, there remains a need for ongoing efforts to address the criticisms of the system and improve its effectiveness and legitimacy.

Fifth, ICSID is not the only institution for the resolution of investment disputes, and there are other mechanisms, such as ad hoc arbitration and domestic courts, that may offer certain advantages in certain contexts. However, ICSID remains an important option for resolving international investment disputes, particularly given the growing trend towards globalization and the increasing number of cross-border investments.

Overall, ICSID remains an important institution for the resolution of investment disputes, but there is a need for ongoing efforts to address the criticisms of the system and improve its effectiveness and legitimacy.

ICSID references

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- ICSID Conciliation Rules (2006).
- ICSID Additional Facility Rules for Arbitration (2006).
- ICSID Additional Facility Rules for Conciliation (2006).
- ICSID Additional Facility Rules for Fact-Finding (2006).
- ICSID Schedule of Fees (2021).

Memorandum on the Fees and Expenses of ICSID Arbitrators (2021). Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965).

United Nations Conference on Trade and Development (UNCTAD), Investment Dispute Settlement Navigator.

ICSID Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)

The ICSID Convention is an international treaty signed in 1965 that establishes the International Centre for Settlement of Investment Disputes (ICSID), an independent organization within the World Bank Group. The primary goal of the ICSID is to facilitate the settlement of investment disputes between States and nationals of other States through arbitration and conciliation.

The ICSID Convention is one of the most important instruments in international investment law. As of May 2023, 164 States have signed the Convention. The Convention provides a comprehensive legal framework for the resolution of investment disputes between States and foreign investors. It sets out the scope of ICSID's jurisdiction, the procedures for initiating and conducting arbitration and conciliation proceedings, and the enforcement of ICSID awards.

One of the key features of the Convention is its provision for the consent-based system of dispute resolution. The Convention requires that both the State and the foreign investor agree to submit the dispute to ICSID arbitration or conciliation. This consent is usually given through an investment treaty or contract between the investor and the State. Once consent is given, the investor can initiate the proceedings by submitting a request for arbitration or conciliation to the ICSID Secretariat.

The ICSID Convention also establishes the legal status of ICSID as an independent international organization. ICSID is governed by an Administrative Council, composed of one representative from each Contracting State. The Convention also provides for the establishment of an ICSID Secretariat, responsible for administering the arbitration and conciliation proceedings.

Overall, the ICSID Convention has played a crucial role in the development of international investment law and the protection of foreign investment. Its provisions have been widely adopted in investment treaties and contracts around the world, making ICSID one of the most important forums for the settlement of investment disputes.

ICSID Administrative and Financial Regulations (2006).

The ICSID Administrative and Financial Regulations were last revised in 2006 and provide the framework for the management of ICSID's operations and finances. The Regulations were adopted by the Administrative Council of ICSID and are binding on all parties involved in ICSID proceedings. The Regulations cover a wide range of topics, including the organization and staffing of the ICSID Secretariat, the budget and fiscal management of ICSID, and the rules for the appointment and remuneration of arbitrators and conciliators. Some of the key provisions of the Regulations are:

Secretariat: The Regulations set out the functions of the ICSID Secretariat, which include receiving and registering requests for arbitration and conciliation, maintaining the case files, and providing administrative support to the arbitral tribunals and conciliators.

Budget and Finance: The Regulations establish the budget of ICSID and the procedures for its approval and implementation. They also set out the rules for collecting fees and charges and the accounting and auditing of ICSID's financial operations.

Appointment of Arbitrators and Conciliators: The Regulations provide the procedures for the appointment of arbitrators and conciliators in ICSID proceedings, including the qualifications and criteria for selection, the challenges and replacements of arbitrators and conciliators, and the remuneration and expenses of these individuals.

Interpretation and Amendment: The Regulations also contain provisions on the interpretation and amendment of the Regulations, including the role of the Administrative Council and the procedures for making changes to the Regulations.

The ICSID Administrative and Financial Regulations are an important aspect of ICSID's institutional framework, ensuring that ICSID operates in a transparent and effective manner.

They play a crucial role in the management of ICSID's finances and operations, as well as in the appointment and compensation of arbitrators and conciliators.

ICSID Institution Rules (2006).

The ICSID Institution Rules were last revised in 2006 and provide the framework for the administration of ICSID proceedings. They apply to all cases submitted to ICSID under the ICSID Convention or Additional Facility Rules.

The Institution Rules cover a wide range of topics, including the initiation of proceedings, the constitution of tribunals, the conduct of proceedings, and the form and effect of awards. Some of the key provisions of the Institution Rules are:

Initiation of Proceedings: The Institution Rules set out the requirements for initiating arbitration and conciliation proceedings, including the form and contents of the request, the notice of registration, and the fees and charges payable.

Constitution of Tribunals: The Institution Rules provide for the constitution of tribunals, including the number of arbitrators and their qualifications, the appointment and challenge of arbitrators, and the appointment of the presiding arbitrator.

Conduct of Proceedings: The Institution Rules establish the procedures for conducting proceedings, including the exchange of written submissions and evidence, holding hearings, and taking evidence.

Awards: The Institution Rules provide for the form and effect of awards, including the time limits for rendering awards, the requirements for the content of awards, and the form and effect of the awards.

Supplementary Provisions: The Institution Rules also contain provisions on a wide range of supplementary matters, such as the liability of parties for costs, the confidentiality of proceedings, the role of the ICSID Secretariat, and the interpretation and application of the Institution Rules.

Overall, the ICSID Institution Rules are an important aspect of ICSID's institutional framework, ensuring that ICSID proceedings are conducted in a fair, efficient, and effective manner. They provide a clear and comprehensive set of rules for conducting proceedings and help promote the legitimacy and credibility of ICSID as a forum for resolving investment disputes.

ICSID Arbitration Rules (2006)

The ICSID Arbitration Rules (2006) govern the proceedings of arbitration under the ICSID Convention. They provide a comprehensive set of rules for the conduct of arbitration proceedings, including rules for initiating arbitration, selecting arbitrators, conducting hearings, presenting evidence, and rendering awards.

The rules outline the procedures for commencing arbitration, including the submission of a notice of arbitration, the appointment of arbitrators, and the establishment of the tribunal. They also provide guidance on the conduct of hearings, including the location, language, and procedure of the hearing, as well as the presentation of evidence and witnesses.

The rules also address issues related to interim measures, including the power of the tribunal to order provisional measures to preserve the parties' rights or assets. They also set out the procedures for rendering an award, including the time limits for the tribunal to render its decision and the requirements for the form and content of the award.

Overall, the ICSID Arbitration Rules (2006) provide a clear and comprehensive framework for the conduct of arbitration under the ICSID Convention, which has been widely adopted and recognized by parties to investment disputes.

ICSID Conciliation Rules (2006).

The ICSID Conciliation Rules (2006) govern the procedures for conciliation proceedings under the ICSID Convention. Conciliation is a process in which an impartial third party, the conciliator, facilitates communication between the parties to help them resolve their dispute amicably.

The rules provide a framework for the conduct of conciliation proceedings, including the appointment of the conciliator, the conduct of meetings, and the submission of proposals for settlement. They also outline the procedures for terminating the conciliation proceedings, including the issuance of a report by the conciliator if a settlement is reached.

The ICSID Conciliation Rules (2006) encourage parties to engage in conciliation as an alternative to arbitration, with the aim of resolving their dispute in a cooperative and mutually acceptable manner.

The rules emphasize the importance of confidentiality and voluntary participation in the conciliation process and provide a flexible and informal procedure to facilitate communication and negotiation between the parties.

Overall, the ICSID Conciliation Rules (2006) provide a useful tool for parties to invest in disputes to resolve their disputes in a cooperative and mutually acceptable manner and are widely recognized and adopted by parties to investment disputes.

ICSID Additional Facility Rules for Arbitration (2006).

The ICSID Additional Facility Rules for Arbitration (2006) govern the procedures for arbitration proceedings under the ICSID Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes. The Additional Facility is available to parties who are not able to use the ICSID Convention, either because the dispute does not involve an "investment" as defined by the Convention, or because one or both parties are not a member of a state party to the Convention.

The Additional Facility Rules for Arbitration (2006) provide a framework for conducting arbitration proceedings, including appointing arbitrators, conducting hearings, and submitting evidence. They also outline the procedures for rendering and enforcing the award and the cost rules.

The rules are designed to provide a flexible and neutral framework for parties to resolve their investment disputes through arbitration, with the goal of promoting efficiency, fairness, and enforceability. They also recognize the importance of confidentiality and the role of the Secretariat in facilitating the arbitration process.

Overall, the ICSID Additional Facility Rules for Arbitration (2006) provide a valuable alternative for parties to investment disputes who are not able to use the ICSID Convention and have been widely adopted and recognized by parties to investment disputes.

ICSID Additional Facility Rules for Conciliation (2006).

The ICSID Additional Facility Rules for Conciliation (2006) provide a framework for the resolution of investment disputes through conciliation under the ICSID Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes. The Additional Facility is available to parties who are not able to use the ICSID Convention, either because the dispute does not involve an "investment" as defined by the Convention, or because one or both parties are not a member of a state party to the Convention.

The rules provide a structured and flexible framework for the conduct of conciliation proceedings, including the appointment of a conciliator, the conduct of meetings and discussions, and the drafting of a settlement agreement. They also outline the procedures for the conduct of proceedings, including the role of the Secretariat, the timing of the proceedings, and the confidentiality of the process.

The ICSID Additional Facility Rules for Conciliation (2006) are designed to promote a cooperative and informal approach to the resolution of investment disputes, with the goal of reaching a mutually acceptable settlement between the parties. They are widely recognized and adopted by parties to investment disputes as an effective alternative to traditional litigation.

Overall, the ICSID Additional Facility Rules for Conciliation (2006) provide a valuable alternative for parties to investment disputes who are not able to use the ICSID Convention and offer a structured and flexible framework for the resolution of disputes through conciliation.

The ICSID Additional Facility Rules for Fact-Finding were adopted by the International Centre for Settlement of Investment Disputes (ICSID) in 2006, along with the other Additional Facility Rules. These rules apply to disputes that are not covered by the ICSID Convention or any other treaty or agreement.

The Fact-Finding Rules provide a framework for independent fact-finding in investment disputes that

may assist in the resolution of disputes before the initiation of arbitration or other proceedings. The Fact-Finding process is non-binding, designed to give the parties a neutral and objective assessment of the facts underlying the dispute.

Under the Fact-Finding Rules, a fact-finding commission is established, comprising one or three members appointed by the Secretary-General of ICSID in consultation with the parties.

The fact-finding commission has the power to request documents, information, and testimony from the parties, and to conduct site visits and inspections, as necessary.

The Fact-Finding process is intended to be flexible, and the commission has broad discretion in the conduct of the proceedings. The commission may issue a report on the facts of the dispute, which may be made available to the parties, but the commission does not have the power to make any recommendations or findings of liability or damages.

The Fact-Finding process may be particularly useful in disputes where the parties are willing to explore a non-binding resolution of their dispute, or where there are questions of fact that are central to the dispute but are not easily resolved through other means. However, the Fact-Finding process is not appropriate in all cases, and the parties must agree to participate in the process.

ICSID Schedule of Fees (2021).

The ICSID Schedule of Fees provides a breakdown of the fees payable to ICSID for numerous services it offers in relation to investment disputes. The fees are payable by the parties to the dispute and cover the costs of administering the proceedings, including the fees of the tribunal, ICSID's administrative expenses, and the expenses of any other experts or witnesses appointed by the tribunal. The Schedule of Fees is divided into two parts: Part I covers fees for the institution of proceedings and Part II covers fees for the conduct of proceedings. Part I includes fees for registration of the request for arbitration, the statement of claim, and the counterclaim, and the fees for the tribunal's appointment. Part II covers fees for the proceedings themselves, such as the fees for the tribunal's work, the hearing, and the award.

The fees are calculated based on a sliding scale, which considers the amount in dispute and the stage of the proceedings. The fees are higher for larger disputes and increase as the proceedings progress. In addition to the fees set out in the Schedule of Fees, parties may also be required to pay other expenses, such as the costs of interpreters or transcription services, as well as any fees charged by the venue for the hearing.

The ICSID Schedule of Fees is regularly reviewed and updated to ensure that it remains fair and reasonable for all parties involved in investment disputes.

ICSID Memorandum on the Fees and Expenses of ICSID Arbitrators (2021).

The Memorandum on the Fees and Expenses of ICSID Arbitrators (2021) sets out the fees and expenses payable to arbitrators appointed in ICSID proceedings. The memorandum provides a detailed breakdown of the fees and expenses for both the presiding arbitrator and the other arbitrators, including their hourly rates, daily rates, and maximum fee caps.

The memorandum also provides guidance on paying expenses, including travel, accommodation, and communication and the reimbursement of administrative expenses incurred by the arbitrators. It sets out the procedures for invoicing and payment of fees and expenses and outlines the consequences of non-payment.

The fees and expenses of ICSID arbitrators are based on the time spent on the proceedings and are intended to be reasonable and proportionate to the complexity of the case. The fees and expenses are borne by the parties in the dispute, in accordance with the allocation of costs determined by the tribunal.

The memorandum is reviewed and updated periodically to ensure that the fees and expenses remain appropriate and in line with prevailing market rates. The most recent update was in January 2021.

ICSID Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965 The Report of the Executive Directors on the

Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965) is a document that provides an overview of the history and development of the ICSID Convention, as well as the work of the Executive Directors in overseeing the operation of the Convention.

The report covers a range of topics, including the establishment of the ICSID Secretariat, the adoption of the ICSID Rules, and the development of the Additional Facility Rules. It also discusses the role of the Executive Directors in the appointment of arbitrators and conciliators, the establishment of ICSID Panels, and the handling of requests for the interpretation and revision of awards.

Overall, the report provides a comprehensive overview of the ICSID Convention and the work of the Executive Directors in ensuring its effective implementation.

ICSID United Nations Conference on Trade and Development (UNCTAD), Investment Dispute Settlement Navigator

The UNCTAD Investment Dispute Settlement Navigator is an online database that provides comprehensive information on investor-state dispute settlement (ISDS) cases worldwide. It includes information on cases brought under several types of investment agreements, such as bilateral investment treaties (BITs) and free trade agreements (FTAs), and under international arbitration rules like those of ICSID.

The database contains information on over 900 ISDS cases, including case summaries, legal documents, and links to relevant sources. It also allows users to search for cases by various criteria, such as the type of agreement, the parties involved, and the outcome of the case.

The Investment Dispute Settlement Navigator is a useful resource for researchers, policymakers, and practitioners interested in ISDS and the legal framework governing international investment.

ICSID conclusions

In conclusion, the International Centre for Settlement of Investment Disputes (ICSID) is a significant institution for the resolution of investment disputes between states and investors from other countries. The ICSID Convention provides a framework that is designed to ensure that the arbitration process is conducted fairly and efficiently, and that the resulting awards are enforceable.

While ICSID has its advantages, there are also concerns about its legitimacy and transparency, particularly regarding the perceived bias towards investors and developed countries. Critics argue that the current system lacks accountability and transparency, and that it is skewed in favor of multinational corporations at the expense of developing countries.

There have been proposals for reforms to ICSID, such as changes to the rules and procedures, the composition of the tribunal, and the transparency and accountability of the process.

While some reforms have been implemented, there remains a need for ongoing efforts to address the criticisms of the system and improve its effectiveness and legitimacy.

Despite these challenges, ICSID remains an important option for resolving international investment disputes, particularly given the growing trend towards globalization and the increasing number of cross-border investments. However, it is essential to ensure that the institution is functioning in a fair and transparent manner, and that it serves the interests of all parties involved, including developing countries and investors from smaller economies.

In summary, ICSID has made significant contributions to the resolution of investment disputes, but there is a need for continuous efforts to improve its functioning, to address the concerns about its legitimacy and transparency, and to ensure that it serves the interests of all parties involved.